

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LUCIA MARETT, *on behalf of herself and
all others similarly situated,*

Plaintiff,

v.

PALM RESTAURANT, INC.,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#
DATE FILED: 10/27/17

No. 16 Civ. 9381

867
**(PROPOSED) ORDER GRANTING MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT, DIRECTING ISSUANCE OF SETTLEMENT
NOTICE AND SCHEDULING OF HEARING ON FINAL APPROVAL**

WHEREAS, the Parties in the above-captioned litigation have advised the Court that they have settled the litigation, the terms of which have been memorialized in a Class Settlement Agreement and Release (hereafter "Settlement Agreement").

WHEREAS, Plaintiff has applied to this Court through an unopposed motion for an order (1) granting preliminary approval of the Settlement Agreement resolving all claims in the above-captioned matter, (2) directing notice to the class, and (3) setting a fairness hearing; and

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WHEREAS, the Court has read and considered Plaintiff's Unopposed Motion for Preliminary Approval, the points and authorities submitted therewith, the proposed Settlement Agreement, and all of the supporting documents; and good cause appearing: *including the supplements 10/13/17 letter from plaintiff's counsel;*

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order incorporates by reference the definitions in the Settlement Agreement and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement.

2. Plaintiff's Unopposed Motion for Preliminary Class Action Settlement ("Motion") is granted. All pending deadlines are hereby vacated. It appears to this Court on a preliminary basis that the Settlement Agreement is fair, adequate and reasonable.

3. Notice of the proposed Settlement Agreement shall be given to class members. The Notice, attached as Exhibit A to ^{this Order} ~~the Settlement Agreement~~, is hereby approved, ^{as amended,} On or before [30 days after the date of this Order], 2017, the Parties shall effectuate the Notice plan, advising the Class of the terms of the proposed Settlement Agreement and their right to opt-out or object to the proposed Settlement Agreement.

The Notice plan shall be effectuated as follows:

a) Defendant will make reasonable efforts, and will bear the full costs, to publish the Notice attached as Exhibit A to the Agreement on a designated Settlement Website, accessible through a link on the Palm.com website, for a 2 month period, in a format accessible through screen reading software, providing visually impaired individuals (1) a description of the general terms of the class settlement, (2) where to obtain a copy of the Agreement, and (3) their right to opt out (for compensatory damages only) or object to the Agreement.

4. The Court finds that the form of notice to Class Members regarding the proposed Settlement Agreement, including the methods of dissemination to the proposed Settlement Class in accordance with the terms of this Order, meet the requirements for due process, the requirements of Rules 23(c)(2) and 23(e) of the Federal Rules of Civil Procedure, and constitutes the best notice practicable under the circumstances.

5. A hearing (the "Fairness Hearing") shall be held before this Court on February 26, 2018 at 4³⁰ ~~am~~ p.m. in the United States District Court for Southern District of New York, located at 500 Pearl Street, Courtroom 12B New York, New York 10007, to

determine whether the Agreement shall be granted final approval, and to address any related matters.

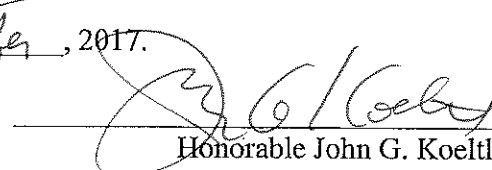
6. The Fairness Hearing may, from time to time and without further notice to the Class (except those who have filed timely objections or entered appearances), be continued or adjourned by order of the Court.

7. Members of the Class may register their objections to the Agreement by filing written objections with the Clerk of the Court, with copies served on Class Counsel and Defendant. Objections must be received by [90 days after the date of this Order], 2017. Members of the Class who also wish to appear at the Fairness Hearing and object to the Agreement in person must so state at the time they file their written objections. Any Class member who does not make his or her objection in the manner provided for in this Order shall be deemed to have waived such objection.

8. All responses to objections shall be filed with the Court and served by mail on the Parties' Counsel and on any objectors by [110 days after the date of this Order], 2017.

9. Counsel for the parties are hereby authorized to ^{use}~~utilize~~ all reasonable procedures in connection with the administration of the Agreement which are not materially inconsistent with either this Order or the terms of the Agreement.

It is so ORDERED this 27 day of October, 2017.



Honorable John G. Koeltl
United States District Judge

Exhibit A

**ATTENTION: LEGALLY BLIND INDIVIDUALS IN THE UNITED STATES WHO
HAVE ATTEMPTED TO VISIT THE WEBSITE HTTP://WWW.PALM.COM SINCE
DECEMBER 5, 2013**

YOU MAY HAVE A CLAIM UNDER THE SETTLEMENT DESCRIBED BELOW

READ THIS NOTICE AND FOLLOW THE INSTRUCTIONS CAREFULLY

BACKGROUND

This notice is to inform you of a class action settlement in the case of Marett v. Palm Restaurant, Inc. (Case No. 16-cv-9381), pending in the United States District Court for the Southern District of New York before the Honorable John G. Koeltl, United States District Judge. The case was brought by Plaintiff, Lucia Marett, on behalf of herself and legally blind individuals who have encountered access barriers on Palm.com. Plaintiff alleged that Defendant, Palm Restaurant, Inc., violated the Americans with Disabilities Act ("ADA") and New York State and local laws in designing and maintaining its website, Palm.com (the "Website"), such that blind visitors could not acquire the same information and engage in the same interactions as sighted visitors to the Website. Defendant denies all liability and the case has been vigorously contested. The Court has granted preliminary approval of the settlement and has scheduled a hearing on [final approval hearing date] to determine whether to grant final approval of the settlement.

SUMMARY OF THE CLASS ACTION SETTLEMENT

The class action settlement calls for Defendant to ensure that the Palm.com Website is accessible such that blind visitors to the Website acquire the same information and engage in the same interactions with substantially equivalent ease of use as sighted visitors to the website. Pursuant to the settlement agreement, Defendants and Plaintiff's attorneys are working together to make the website accessible under that standard.

Under the settlement, Class Counsel will ask the Court to award reasonable fees and costs of \$89,000 for their legal work on this case. Defendant does not dispute Class Counsel's right to recover reasonable fees and costs in the amount of \$89,000.

Under the settlement, Class Counsel will ask the Court to award Plaintiff a service award in the amount of \$1,000, for her services to the Class. Defendant does not dispute Plaintiff's right to receive a service award in the amount of \$1,000.

Additionally, Class Counsel will ask the Court to approve payment of \$20,000 as fees to Advanced Litigation Strategies, LLC to administer the settlement.

OPTIONS FOR MEMBERS OF THE SETTLEMENT CLASS

If you are a legally blind individual who has attempted to access Palm.com since December 5, 2013, you have three options:

1. You may do nothing and be bound by the terms of the settlement; or

The Court has not ruled on the reasonableness of any of these requests for fees and costs.

2. You may object to the settlement, in which case you must follow the procedures set forth below.
3. You may opt out of the settlement, in which case you must follow the procedures set forth below. However, please note that although Settlement Class Members may opt out in order to pursue monetary relief, no Settlement Class Member may opt out of the release of claims for injunctive relief.

Should the settlement be approved, all members of the Settlement Class that have not opted out will be bound concerning the terms of the settlement relating to the accessibility of the Website.

If you choose to object to the settlement, you must submit a written objection, stating that you object to the settlement in *Marett v. Palm Restaurant, Inc.*, Case No. 16-cv-9381, to the Settlement Administrator, with copies to Class Counsel and counsel for Defendant. The addresses of the Settlement Administrator, Class Counsel, and counsel for Defendant are set forth below. Your objection must be filed with or otherwise received by the Settlement Administrator no later than [60 days after the first date Notice is published]. If you wish to appear and present your objection orally at the hearing for final approval of the settlement, you must so state in your written objection. Your written objection should include your name, address and telephone number and should be mailed to the following address:

Settlement Administrator
Advanced Litigation Strategies, LLC
30 East 39th Street, Second Floor
New York, New York 10016

If you choose to opt out of the settlement to pursue monetary relief for compensatory damages, you must submit a written opt out statement, stating that you opt out of the settlement in *Marett v. Palm Restaurant, Inc.*, Case No. 16-cv-9381, to the Settlement Administrator, with copies to Class Counsel and counsel for Defendant. The addresses of the Settlement Administrator, Class Counsel, and counsel for Defendant are set forth below. Your opt out statement must be filed with or otherwise received by the Settlement Administrator no later than [60 days after the first date Notice is published]. Your written opt out statement should include your name, address and telephone number and should be mailed to the following address:

Settlement Administrator
Advanced Litigation Strategies, LLC
30 East 39th Street, Second Floor
New York, New York 10016

FURTHER INFORMATION

If you want a copy of the proposed settlement agreement or related documents, you may contact Class Counsel at the following address:

C.K. Lee, Esq.
Lee Litigation Group, PLLC
30 East 39th Street, Second Floor
New York, New York 10016

Counsel for Defendant may be contacted at the following address:

Ivan D. Smith, Esq.
Kaufman Dolowich & Voluck, LLP
40 Exchange Place, 20th Floor,
New York, New York 10005

The Settlement Agreement and case documents are available from Class Counsel. Alternatively, you may inspect the Court's files during business hours at the Clerk of the Court, United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007. The case caption is *Marett v. Palm Restaurant, Inc.*, Case No. 16-cv-9381.

Please do not call the Judge or the Court regarding this matter.

EXHIBIT B